

STATE OF MICHIGAN  
COURT OF APPEALS

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ADAM SHAKOOR, as Special Personal  
Representative of the Estate of LINN ALAN  
KAIN, Deceased,

UNPUBLISHED  
January 25, 2007

Plaintiff-Appellant,

v

No. 264499  
Wayne Circuit Court  
LC No. 03-304342-NH

OAKWOOD HOSPITAL ANNAPOLIS  
CENTER-WAYNE, OAKLAND HOSPITAL,  
JAMES LOVE, M.D., DR. OBEIDY, KEVIN  
BROADY, M.D., and DONALD SHIPPER, M.D.,

Defendants,

and

NAJAM SYED, M.D., MORTEZA HARIRI, M.D.  
and CHARLES WASSON, M.D.,

Defendants-Appellees.

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Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Plaintiff, Adam Shakoar, as Special Personal Representative of the Estate of Linn Alan Kain, deceased, appeals as of right from an order granting defendant, Dr. Najam Syed's, motion for taxed costs. Plaintiff also challenges the circuit court's separate order granting taxed costs in favor of defendant, Dr. Charles Wasson. We affirm.

Plaintiff first argues that the trial court erred by granting defendants costs for expert witnesses. We disagree. Because this case presents an issue of statutory construction, we review it de novo. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 566; 702 NW2d 539 (2005). An award of taxable costs is reviewed for an abuse of discretion. *Kernen v Homestead Dev Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002). An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes. *Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 254; 701 NW2d 144 (2005).

Plaintiff argues that the circuit court erred in ruling that plaintiff was entitled to recover expert witness fees for services associated with the experts' depositions. We disagree.

MCL 600.2549 governs taxation of costs for depositions and provides:

Reasonable and actual fees paid for depositions of witnesses filed in any clerk's office and for the certified copies of documents or papers recorded or filed in any public office shall be allowed in the taxation of costs only if, at the trial or when damages were assessed, the depositions were read in evidence, except for impeachment purposes, or the documents or papers were necessarily used.

In *Elia v Hazen*, 242 Mich App 374, 381-382; 619 NW2d 1 (2000), this Court held that under the plain and unambiguous language of this statute, deposition costs cannot be taxed unless the depositions are filed in the court clerk's office. It is undisputed that the relevant deposition transcripts were not filed with the court clerk.

However, defendant was not awarded the costs associated with securing transcripts of the experts' depositions. Rather, defendant was awarded fees for their experts' services. A trial court has discretion under MCL 600.2164 to authorize expert witness fees for court time and for the time required to prepare for testifying. *Herrera v Levine*, 176 Mich App 350, 357-358; 439 NW2d 378 (1989). Plaintiff does not challenge the reasonableness of the amount of time spent by the experts in preparing to testify or the reasonableness of the fees paid to the experts under MCL 600.2164.

Dr. Syed provided a taxable bill of costs with supporting documentation to the circuit court showing that he had incurred \$15,425 under MCL 600.2164 for the expert witness fees of three physicians. The circuit court's order for Dr. Syed ordered \$15,595 in costs be paid to Dr. Syed, which included the \$15,425 in expert fees and the \$170 recoverable under MCL 600.2441.

Similarly, Dr. Wasson provided documentation to the circuit court showing that he had incurred \$13,546.50 under MCL 600.2164 for the expert witness fees of two physicians. The circuit court's order for Dr. Wasson ordered \$13,716.50 in costs be paid to him, which included the \$13,546.50 in expert fees and the \$170.00 recoverable under MCL 600.2441.

The circuit court did not allow Dr. Syed or Dr. Wasson to recover the costs claimed for the depositions under MCL 600.2549. The circuit court, therefore, did not abuse its discretion in awarding Dr. Syed and Dr. Wasson taxable costs and fees under MCL 600.2164 and MCL 600.2441. *Herrera, supra*.

Plaintiff also argues that Dr. Syed and Dr. Wasson should not have been permitted to recover because their insurance carrier paid the expert witness expenses, not Dr. Syed and Dr. Wasson. This argument is without merit.

Plaintiff's argument is also an issue of statutory construction that we review de novo. *Devillers, supra*. As discussed, according to the plain language of MCL 600.2164 and MCL 600.2549, Dr. Syed and Dr. Wasson are entitled to recover the costs awarded by the circuit court. Plaintiff argues that costs are inappropriate where the defendants' insurance carrier paid the expenses and not the defendants themselves. However, if the text of a statute is clear and unambiguous, this Court must apply the statute as written, and nothing may be read into it that is "not within the Legislature's intent as derived from [its] language." *AFSCME v Detroit*, 468 Mich 388, 399-400; 662 NW2d 695 (2003). Here, plaintiff fails to cite any specific language in

the statute that supports his argument and offers no legal authority on point in support of his argument. This Court, moreover, is prohibited from reading plaintiff's proposed "insurance carrier" exception into the statute. Therefore, even assuming plaintiff is correct in stating that defendants' insurance carrier paid the costs, plaintiff's argument fails as a matter of law.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Deborah A. Servitto